

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MARCO ANTONIO RAMOS FUNEZ,

Petitioner,

-v-

18-CV-6413CJS
ORDER

JEFFERSON B. SESSIONS, Attorney
General of the United States, et al.,

Respondents.

Pro se Petitioner, Marco Antonio Ramos Funez, is a civil immigration detainee currently held at the Buffalo Federal Detention Facility. It appears from the Petition, that Petitioner is subject to a final order of removal but claims that he cannot be removed because he has obtained derivative citizenship based on his mother's naturalization. Docket Item 1 at 22-30. He therefore seeks relief under 28 U.S.C. § 2241. Docket Item 1. Petitioner has paid the \$5.00 filing fee.

ORDER

IT IS HEREBY ORDERED that within **45 days of the date of this Order**, Respondents shall file and serve an **answer** responding to the allegations in the Petition; and it is further

ORDERED that within **45 days of the date of this Order**, Respondents shall file and serve, in addition to their answer, a **memorandum of law** addressing each of the

issues raised in the Petition, including whether this Court has jurisdiction over Petitioner's claim of derivative citizenship;¹ and it is further

ORDERED that within **45 days of the date of this Order**, instead of their answer, Respondents may file a **motion to dismiss** the Petition, accompanied by appropriate exhibits demonstrating that an answer to the Petition is unnecessary; and it is further

ORDERED that Petitioner shall have **25 days after his receipt of the Respondents' answer or motion to dismiss** to file a written response; and it is further

ORDERED that the Clerk of Court shall serve a copy of the Petition, together with a copy of this Order, electronically via a Notice of Electronic Filing to the United States Attorney's Office, Western District of New York at USANYW-Immigration-Habeas@usdoj.gov.

THE PETITIONER MUST FORWARD A COPY OF ALL FUTURE PAPERS AND CORRESPONDENCE TO THE ATTORNEY APPEARING FOR THE RESPONDENTS.

SO ORDERED.



Charles J. Siragusa
United States District Judge

DATED: Aug. 8, 2018
Rochester, NY

¹ See 8 U.S.C. §§ 1252(b)(2), (b)(5); compare *Lainez v. Osuna*, 17 Civ. 2278 (HBP); 2018 WL 1274896, at *3 (Mar. 8, 2018) (appeal filed) ("If the BIA also rejects the [derivative] citizenship claim, the aggrieved individual may then file a petition for review of the citizenship claim in 'the court of appeals for the judicial circuit in which the immigration judge completed the proceedings.'" (quoting 8 U.S.C. §§ 1252(b)(2), (b)(5)) (other citations omitted)), with *Lewis v. McElroy*, 294 F. App'x 637, 640 (2d Cir. 2008) (Summary Order) ("Lewis's petition, which claims citizenship, challenges 'whether the petitioner is an alien.' 8 U.S.C. § 1252(e)(2)(A). As such, his claim is properly raised as a petition for habeas corpus, which is not converted to a petition for review even after passage of the REAL ID Act.") (citations omitted)).